

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2767

PETITION OF OLIVIA AZAT

OPINION OF THE BOARD

(Opinion Adopted September 8, 2010)
(Effective Date of Opinion: October 7, 2010)

Case No. S-2767 is an application, pursuant to Section 59-G-2.00 of the Zoning Ordinance, for a special exception to permit an accessory apartment. The subject property is Lot 133, Block B, Meadowvale Subdivision, located at 18708 Capella Lane, Gaithersburg, Maryland 20877, in the R-90 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on May 13, 2010, and continued the hearing, with the concurrence of the Petitioner, to June 14, 2010, to allow her to submit additional information required to complete the application. The Hearing Examiner did not receive any further substantive filings from the Petitioner and closed the record in the case, as scheduled, on July 7, 2010. On July 27, 2010, the Hearing Examiner issued a Report and Recommendation for denial of the special exception, finding that because the Petitioner failed to submit the required documentation to complete her application, she failed to meet the requirement of Section 59-G-1.21(c) of the Zoning Ordinance which states:

“The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.”

Decision of the Board:

Special Exception **Denied.**

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on September 8, 2010. After careful consideration and review of the record in the case, the Board finds that the Petitioner failed to meet her burden of proof, and failed to meet the reasonable requirements of the special exception process. The Board adopts the Report and Recommendation and denies the special exception.

On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with David K. Perdue, Vice-Chair and Catherine G. Titus, Chair, in agreement and Walter S. Booth necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 7th day of October, 2010.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective

interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.